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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT B., Appellant, v. CHRISTINE P. and ROBERT B., II, Appellees.	2 CA-JV 2008-0101 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18493399

Honorable Charles S. Sabalos, Judge

AFFIRMED

M. Valentine Schaffer
Tucson
Attorney for Appellant

Bellovin & Karnas, P.C.
By Lenore Tsakanikas
Tucson
Attorney for Appellee Christine P.

B R A M M E R, Judge.

¶1 Appellant Robert B. is the biological father of Robert B., II (Robbie), who was born in April 2005. The child's mother, Christine P., initiated this private severance action in December 2007 by filing a petition to terminate Robert's parental rights pursuant to

A.R.S. § 8-533(B)(4). Following a contested termination hearing in September 2008, the juvenile court found Christine had established the alleged statutory ground for severance by clear and convincing evidence and had shown by a preponderance of the evidence that terminating Robert's parental rights was in Robbie's best interests. The court prepared written findings of fact and conclusions of law, which are embodied in the formal judgment entered on September 23, 2008, from which Robert appeals.

¶2 Robert contends the juvenile court "clearly erred" in finding sufficient evidence to support termination of his rights pursuant to § 8-533(B)(4) and in finding severance of his rights was in Robbie's best interests. In general, this court will not disturb a juvenile court's decision to terminate a parent's rights if there is reasonable evidence to support the court's order. *Minh T. v. Ariz. Dep't of Econ. Sec.*, 202 Ariz. 76, ¶ 9, 41 P.3d 614, 616-17 (App. 2002). But we review de novo legal issues concerning the interpretation of the statutes and rules governing termination proceedings. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 9, 83 P.3d 43, 47 (App. 2004) (interpretation of § 8-533). We view the evidence in the light most favorable to affirming the juvenile court's ruling. *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 20, 159 P.3d 562, 566 (App. 2007).

¶3 Robert is currently an inmate in the Arizona Department of Corrections, serving a mitigated, 7.5-year sentence for attempted child molestation, a class three felony and dangerous crime against children. The victim of the offense was an eleven-year-old boy who had been living with Robert in Lake Havasu City at the time and whom, Robert told a probation officer, he "love[d] . . . as if he were his own son."

¶4 Robbie was conceived in early July 2004, less than a month after Christine and Robert met in Pima County. Christine was already pregnant when she learned Robert had entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37 (1970), to the attempted molestation charge in Mohave County in May 2004. On July 29, 2004, he was convicted pursuant to his plea agreement and placed on five years' probation. The conditions of his probation required him to register as a Level 3 sex offender and prohibited contact with any child younger than eighteen without the prior written approval of his probation officer.[1] In October 2006, Robert violated the conditions of his probation. He later admitted the violation and was sentenced in February 2007 to the 7.5-year term he is currently serving. Robert testified that his "actual release date" is December 1, 2012—four months before Robbie's eighth birthday.

¶5 The juvenile court found termination of Robert's parental rights warranted under either of the alternate grounds contained within § 8-533(B)(4).[2] First, it found the

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[1]According to the juvenile court's minute entry ruling, "This [Level 3] designation requires the highest level of community notification based on a sex offender's assessed risk to the community. A.R.S. §§ 13-3821(A)(7) and 13-3826(E)."

[2]Section 8-533(B)(4) authorizes the termination of a parent's rights upon proof "[t]hat the parent is deprived of civil liberties due to the conviction of a felony," if that felony

> is of such nature as to prove the unfitness of that parent to have future custody and control of the child, including murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, *or* if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.

offense of attempted child molestation to be a felony "of such nature as to prove [Robert's] unfitness to have future custody and control of [Robbie]." To the extent that finding was not self-evident, it was also supported by the testimony of two witnesses: James Stewart, whom Robert had seen regularly for sex offender counseling in 2005 and 2006, and Sandra Chirumblo, who prepared the court-ordered social summary required by A.R.S. § 8-536.

¶6 Stewart testified that, after working with Robert for two years, he had "really thought that [Robert] was improving" and thus was surprised to learn that, in October 2006, Robert had violated the conditions of his probation by sending a sexually explicit image to a female probationer. The level of willful deception involved and the fact the violation involved sexual misconduct caused Stewart to conclude that Robert was not currently amenable to sex offender treatment, that he posed "a clear danger" to the community and "a big risk" to Robbie, and that he should be incarcerated.

¶7 In Chirumblo's previous career as a caseworker and then a supervisor in Child Protective Services' "Sex Abuse Unit," she had accumulated seventeen years' experience with child sexual abuse issues and sex offender issues. The conclusion she had reached in preparing the social summary was that, upon Robert's release from prison, he was likely to present a risk to children in general and to Robbie in particular, given his lack of amenability to sex offender treatment and "the statement in the psychosexual evaluation that [Robert]'s most likely victims would be pre-pubescent and pubescent underage males." Chirumblo recommended the termination of Robert's parental rights because of the risk he posed to

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(Emphasis added.)

Robbie and because, in her opinion, "the nature of his crimes and his criminal history w[ere] such that he would not be a fit parent." We find no error in the juvenile court's ruling that the nature of Robert's conviction, together with other factors the court discussed, proved Robert's unfitness to parent Robbie for purposes of § 8-533(B)(4).

¶8 Alternatively, the juvenile court also found Robert's 7.5-year prison sentence to be of such length that Robbie "will be deprived of a normal home for a period of years." § 8-533(B)(4). Robert claims this finding was erroneous because he had been "in the process of developing a relationship" with Robbie, which he contends could have been "fostered by frequent visits facilitated by relatives" over the fifty months or more Robert would remain in prison. He further argued Robbie "would not be deprived of a normal home during the father's prison term, as the child lived safely and securely with his mother and could have a relationship with his father and the paternal family."

¶9 In *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, ¶ 29, 995 P.2d 682, 687 (2000), our supreme court held that determining "when a sentence is sufficiently long to deprive a child of a normal home for a period of years" requires a case-by-case consideration of all relevant facts. Pertinent factors include but are not limited to:

> (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

Id. ¶ 29. Here, the juvenile court's minute entry states it had considered "the reasoning and relevant factors articulated . . . in *Michael J.*," as well as "all of the circumstances of this case," before finding that Robbie "has had virtually no relationship with his father since he was an infant, in all likelihood has no recollection of his father and would not benefit from exposure to the father during any visitation which could be arranged in the prison environment."

¶10 The juvenile court's findings are amply supported by the testimony of both Christine P. and Chirumblo. Christine testified that, because the conditions of Robert's probation had prevented him from initially having any contact at all with Robbie, Robert had never even seen his son until Christmas of 2005, by which time Robbie was nearly nine months old. Their first meeting was a two-hour visit at Robert's parents' home, supervised by Robert's surveillance officer and probation officer. Robert then did not see Robbie a second time until around his first birthday in April 2006, after Christine had been approved to chaperone their visits. From April or May 2006 until August or September 2006, Robert's contact with Robbie consisted of two-hour visits once a week. Shortly before Robert violated his probation in October 2006, the length of those visits had been increased to either six or eight hours' duration.

¶11 By the time of the contested termination hearing in September 2008, Robbie was three years and five months old. His last contact with his father had been approximately two years earlier, when Robbie was roughly eighteen months old. As Christine testified, "[Robbie] doesn't know his father. He doesn't even know his picture. I showed him a picture, he doesn't know who it is." Thus, the record supported the juvenile court's finding

that there was essentially no relationship existing between Robert and Robbie to be "continued and nurtured during [Robert's] incarceration." *Michael J.*, 196 Ariz. 246, ¶ 29, 995 P.2d at 688. The court found Robbie would not benefit from exposure to Robert during visitation "in the prison environment." Further, the court found, not only would Robert remain confined for more than four additional years but, even after his eventual release from prison, "it is likely that he will be prohibited from having unsupervised contact with children as a result of his sex offender status." In short, the record supports the court's finding that Robert's 7.5-year sentence is of such a length as to deprive Robbie of a normal home for a period of years. We find no error.

¶12 Finally, Robert contends the juvenile court erred in finding by a preponderance of the evidence that terminating his parental rights was in Robbie's best interests. That severing a parent's rights will serve the best interests of the child "may be established by either showing an affirmative benefit to the child by removal or a detriment to the child by continuing in the relationship." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 72 (App. 1997). In assessing a child's best interests, a juvenile court may also consider whether the child's needs are currently being met by someone other than the parent. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994).

¶13 Here, the juvenile court found: "The child requires protection from the risk of sexual abuse by his father when [Robert] is released from prison. Termination of the father's parental rights would promote the child's stability and safety in the home of his

mother." Again we find abundant evidence in the record supporting the court's best-interests findings and refuting Robert's assertion of error.

¶14 Chirumblo testified that, based on her observations, Robbie did not know his father at all and could not have any sort of normal parental relationship with him while Robert was incarcerated. Based, too, on her training and experience, she testified that having a parent who is a registered sex offender can be detrimental to a child. More importantly, she believed Robert would present a risk to Robbie, "the nature of his crimes and his criminal history w[ere] such that he would not be a fit parent," and terminating the rights of an unfit parent is a benefit to the child. Chirumblo did not believe it would benefit Robbie to have contact with Robert's parents and other paternal relatives because, Robert's mother told Chirumblo, "his entire family . . . did not believe he had committed this offense." As a result, Chirumblo testified, those relatives could not adequately protect Robbie from the possibility of future abuse.

¶15 Having found substantial evidence to support the juvenile court's factual findings and no merit to Robert's assertions of error, we affirm the court's order terminating Robert's parental rights to Robbie.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge